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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,589	08/25/2003	Ricky W. Purcell	18614 (27839-2533)	4251
45736 7590 02/04/2010 Christopher M. Goff (27839) ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE SUITE 2600 ST. LOUIS, MO 63102				
EXAMINER HELLING, KAITLYN ELIZABETH				
ART UNIT 3739		PAPER NUMBER		
NOTIFICATION DATE 02/04/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

### Office Action Summary

**Application No.**

10/648,589

**Applicant(s)**

PURCELL ET AL.

**Examiner**

KAITLYN E. HELLING

**Art Unit**

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-28 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-28 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Entry of Amendment***

1. Applicant's amendment filed on October 07, 2009 has been entered. Claims 26-28 and 31 are currently pending.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 26-28 and 31 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 26-28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,849,057 B2 to Satou et al. (Satou) in view of US 5,728,058 to Ouellette et al. (Ouellette).

Regarding claim 26, Satou teaches a method (Col. 1, lines 9-16) of supporting a portion of a body, the method comprising: attaching on end of an elastic band to skin on the body using an adhesive (title and abstract); wrapping the elastic band around the portion of the body (Figs. 8-13); and securing a plurality of fingers (6) that project from an opposing end of the elastic band to an exposed section of the elastic band (Col. 10, line 22-Col. 11, line 32), including at least one finger that extends from the end of the elastic band along a lateral edge and at least one finger that extends from the end of the

elastic band along an opposing lateral edge (see Figures). However, Satou does not teach at least one finger that extends from a midsection of the end of the elastic band. Ouellette teaches an elastic knee wrap (title) that includes an upper strap portion and lower strap portion that is connected to the wrap in a releasable manner (Col. 5, lines 42-59) to provide differential tensioning during use. Similarly, Ouellette teaches that either the upper or lower strap portion may have one or more additional separations to form a third or more strap portions to provide additional differential tensioning along the wrap. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Satou to have included the additional strap portions (i.e. fingers) of Ouellette as Ouellette teaches that it is advantageous to provide one or more additional straps to allow for additional differential tensioning. This is particularly true in light of the lack of a disclosed criticality for specifically having three finger elements as applicant admits that the number, size and arrangement of the fingers on the flexible wrap may vary depending on the application where the wrap is being used.

Regarding the repositioning steps of claims 27 and 28, Satou if not inherently then it would have been obvious to one having ordinary skill in the art at the time of the invention to reposition the fingers as necessary in order to achieve the appropriate pressure so as to therapeutically benefit the user and not cause pain.

Regarding claim 31, Satou in view of Ouellette teaches the method of claim 26 with Satou teaching the further limitation of wrapping the elastic band around the body

more than one time by less than two times (see Figures 8-13) as indicated by the overlapping edges.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KAITLYN E. HELLING** whose telephone number is (571)270-5845. The examiner can normally be reached on Monday - Friday 9:00 a.m. to 5:30 p.m. EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571)272-4764. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KAITLYN E. HELLING/  
Examiner, Art Unit 3739

/Linda C Dvorak/  
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